REMARKS

In the Office Action the Examiner issued a restriction requirement. Applicant elects claims 1 through 21 and has cancelled claims 22-26.

The Examiner also required Applicant to provide the information required under 37 C.F.R. §§ 41.202(a)(2), 41.202(a)(3), 41.202(a)(6) 41.202(d) and 41.102(a). Applicant submits a separate paper herewith that addresses this requirement.

Since all pending claims have been allowed and all requirements of the Examiner have been met Applicant requests that an interference with U.S. patent No. 6,146,423 be declared. The records of the United States Patent and Trademark Office indicate that the maintenance fees have been paid on this patent.

Respectfully submitted,

Dated: March 18, 2010

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.	:	10/007,812
Applicant	:	ROBERT S. SUPINSKI
Filed	:	November 8, 2001
Title	:	PATELLA REPLACEMENT APPARATUS
Group Art Unit	:	3733
Examiner	:	David C. Comstock
Docket No.	:	011072

INTERFERING CLAIMS AND PROPOSED COUNTS FOR PROPOSED INTERFERENCE WITH U. S. PATENT NO. 6,146,423 AND ACCOMPANYING SHOWING UNDER 37 C.F.R. §41.202

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In the Office Action dated January 19, 2010 the Examiner required Applicant to provide the information required under 37 C.F.R. §§ 41.202(a)(2), 41.202(a)(3), 41.202(a)(6) 41.202(d) and 41.102(a). This paper is submitted in response to that requirement.

Identification of Claims that Applicant Believes Interfere 37 C.F.R. §41.202(a)(2)

Applicant believes that claims 1-21 of the present application interfere with claims 1-24 of U. S. Patent No. 6,146,423 (the "Cohen patent"), which issued on November 14, 2000, from U.S. Patent Application Serial No. 09/239,647 filed on January 28, 1999.

Presentation of Proposed Counts Pursuant to 37 C.F.R. §41.202(a)(2)

Applicant proposes that Applicant's claim 1 be Count I of the interference, that Applicant's claim 8 be Count II of the interference and that Applicant's claim 15 be Count III of the interference.

Showing of How the Claims Correspond to the Proposed Counts 37 C.F.R. § 41.202(a)(2)

Proposed Count I

Applicant's claims 1 and 3 through 7 and claims 1-7 of the Cohen patent correspond to proposed Count 1.

Applicant's claim 1 is proposed Count I and is of the same scope as claim 2 of the Cohen patent. Applicant's claims 2 through 6 and Cohen's claims 3 through 6 are dependent claims that contain the same language and specify materials from which the patella replacement device is fabricated. Claim 7 of Cohen say that the patella replacement device is fabricated from pyrolytic carbon. Because the prior art, such as U.S. Patent No. 5,522,901 to Thomas et al., disclose the recited materials or teach the use of biocompatible materials in general Applicant's claims 2 through 6 and Cohen's claims 2 through 7 are not patentably distinct from proposed Count I. Therefore, Applicant's 1 through 6 and Cohen's claims 2 through 7 correspond to proposed Count I.

Cohen's claim 1 is the parent claim of Cohen's claim 2 and differs from claim 2 in that claim 1 does not require an annular ring. It would be within the skill of the art to remove the annular right from the device of proposed Count 1 because the device disclosed by Thomas et al. does not have an annular ring. Therefore, claim 1 of Cohen is not patentably distinct from proposed Count I.

Applicant's claim 7 depends from Applicant's claim 1 and requires a collar be attached to the patella replacement device. Because proposed Count I includes and annular ring it would be within the skill of the art to modify the device of proposed Count I to add a collar. Therefore Applicant's claim 7 corresponds to proposed Count I.

For the foregoing reasons Applicant's claims 1 and 3 through 7 and Cohen's claims 1 through 7 correspond to proposed Count I.

Proposed Count II

Applicant's claims 8 through 14 are the same as Cohen's claims 8 through 13 and 15 respectively. Claim 8 in both the present application and the Cohen patent are the only independent claims among this group. Applicant's claims 9 through 14 and Cohen's claims 9 through 15 depend from their respective claim 8 and specify materials from which the patella replacement device is fabricated. Because the prior art, such as U.S. Patent No. 5,522,901 to Thomas et al., disclose the recited materials or teach the use of biocompatible materials in general Applicant's claims 9 through 14 and Cohen's claims 9 through 15 are not patentably distinct from proposed Count II. Therefore, Applicant's claims 8 through 14 and Cohen's claims 8 through 15 correspond to proposed Count I.

Proposed Count III

Applicant's claim 15, and Cohen's claim 16 are identical independent claims. Applicant's claims 16 through 21 depend from Applicant's claim 15 and are respectively identical to Cohen's claims 17, 19, through 22 and 24. Proposed Count III is Applicant's claim 15 and Cohen's claim 16.

Applicant's claim 16 and Cohen's claim 17 are identical and require that the annular ring be secured to the first member by an interference fit. The use of an interference fit between two parts that are coupled together is well-known in the art. Therefore, Applicant's claim 16 and Cohen's claim 17 are not patentably distinct form proposed Count III.

Cohen's claim 18 depends from claim 16 and requires that the annular ring have a peripheral groove. The prosthesis disclosed in U.S. Patent No. 4,007,495 to Frazier has a

peripheral groove between parts 10 and 15. Therefore, Cohen's claims 18 is not patentably distinct from proposed Count III.

Applicant's claims 17 and 18 as well as Cohen's claims 19 and 20 say that the patella device is fabricated from polyethylene or titanium. Because Thomas et al disclose the use of polyethylene or titanium, these claims are not patentably distinct from proposed Count III.

Cohen's claim 21 depends form claim 16 and says that there must be three apertures on the flat surface of the first member. Thomas et al disclose a prostheses in which there is one aperture in on the flat surface of one member. The number of apertures is merely a matter of choice. Therefore, Cohen's claim 21 is not patentably distinct from proposed Count III.

Cohen's claim 22 depends from claim 21 and says that there are three projections on the second member that coact with the three apertures on the flat surface of the first member. Thomas et al. disclose a prostheses in which a projection on one member coacts with an aperture on the flat surface of a second member. Therefore, Cohen's claim 22 is not patentably distinct from proposed Count III.

Cohen's claim 23 depends from claim 22 and says that second member has a Y-shaped aperture located between the projections. The patent teaches at column 3 lines 5-9 that this slot is provided to accommodate bone cement during implantation. Frazier at column 2, lines 40-44 teaches the use of bone cement in openings drilled into the patella. It would be within the skill of the art to also provide a slot in the prosthesis to receive bone cement. Therefore, Cohen's claim 23 is not patentably distinct from proposed Count III.

Applicant's claim 21 and Cohen's claim 24 are dependent claims that require bone cement placed in at least one aperture of the porous metal portion of the patella replacement device. Frazier at column 2, lines 40-44 teaches the use of bone cement in openings drilled into the

patella. It would be within the skill of the art to also provide bone cement in at least one aperture of the porous metal portion of the patella replacement device. Therefore, Applicant's claim 21 and Cohen's claim 24 are not patentably distinct from proposed Count III.

Chart Comparing One of Applicant's Claims and One of Cohen's Claims to Each Count 37 C.F.R. §§ 41.202(a)(3)

Applicant has proposed three counts. Attached is a chart comparing Applicant's claim 1 and Cohen's claim 2 to proposed Count I, comparing Applicant's claim 8 and Cohen's claim 8 to proposed Count II and comparing Applicant's claim 15 and Cohen's claim 16 proposed Count III.

Constructive Reduction to Practice 37 CFR § 41.202(a)(6)

The present application constitutes a constructive reduction to practice. There are no earlier applications for which Applicant wishes to be accorded the benefit of a constructive reduction to practice.

Prima Facie Showing Under 37 C.F.R. § 41.202(d)

On January 9, 2004 Applicant submitted his declarations dated January 2, 2004 and the drawings and other documents identified in the declarations. On May 4, 2004 Applicant resubmitted this declaration and a second declaration from Brian McDaniel dated April 30, 2004. A copy of these declarations is submitted herewith. These declarations and exhibits establish that Dr. Supinski conceived of a patella replacement device within the pending claims in 1989 and had actual reductions to practice by May, 1990, and in January, 2001. Thus, applicant's invention date is well before the filing date of January 28, 1999, of the Cohen patent. Accordingly, there is sufficient basis upon which the applicant is entitled to a judgment relative to the patentee. 37 C.F.R. §41.202(d).

Conclusion

In view of the foregoing, the Applicant respectfully requests that an interference be declared employing Proposed Counts I, II and III corresponding to applicant's claim 1, 8 and applicant's claim 15, respectively. The Proposed Counts provide a suitable basis for priority determination.

Respectfully submitted,

Dated: March 18, 2010

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Applicant's Claim 1	Proposed Count I	Cohen Claim 2 with parent claim 1
1. A patella replacement device for use in repairing or replacing the destroyed natural patella of a patient, comprising:	A patella replacement device for use in repairing or replacing the destroyed natural patella of a patient, comprising:	1. A patella replacement device for use in repairing or replacing the destroyed natural patella of a patient, comprising:
a first member fabricated from a biocompatible porous metal material and having a rounded fixation surface for implantation in the patella region of a patient with the porous metal allowing biological fixation to the patella region of the patient, said first member having a relatively flat surface opposite said rounded surface and having at least one aperture therein;	a first member fabricated from a biocompatible porous metal material and having a rounded fixation surface for implantation in the patella region of a patient with the porous metal allowing biological fixation to the patella region of the patient, said first member having a relatively flat surface opposite said rounded surface and having at least one aperture therein;	a first member fabricated from a biocompatible porous metal material and having a rounded fixation surface for implantation in the patella region of a patient with said porous metal allowing biological fixation to said patella region of said patient, said first member having a relatively flat surface opposite said rounded surface and having at least one aperture therein;
a second member fabricated from a biocompatible joint articulating material and having a top rounded surface and an opposing surface having an extending projection for coacting with said aperture to enable said first member to couple to said second member with said second member operative to allow articulation against the femoral area of said patient; and	a second member fabricated from a biocompatible joint articulating material and having a top rounded surface and an opposing surface having an extending projection for coacting with said aperture to enable said first member to couple to said second member with said second member operative to allow articulation against the femoral area of said patient; and	a second member fabricated from a biocompatible joint articulating material and having a top rounded surface and an opposing surface having an extending projection for coacting with said aperture to enable said first member to couple to said second member with said second member operative to allow articulation against the femoral area of said patient.
an annular ring having a central aperture for coupling to said flat surface of said first member and having a plurality of apertures about a periphery of said ring, the periphery encircling the rounded fixation surface and extending from a peripheral edge of said first member;	an annular ring having a central aperture for coupling to said flat surface of said first member and having a plurality of apertures about a periphery of said ring, the periphery encircling the rounded fixation surface and extending from a peripheral edge of said first member;	2. The patella replacement device according to claim 1 further comprising:
the patella replacement device having a shape conforming to a natural patella of a typical patient.	the patella replacement device having a shape conforming to a natural patella of a typical patient.	an annular ring having a central aperture for coupling to said flat surface of said first member and having a plurality of apertures about a periphery of said ring, the periphery surrounding and extending from a peripheral edge of said first member.

Applicant's claim 8	Proposed Count II	Cohen's Claim 8
8. A patella replacement device for use in repairing or replacing the destroyed natural patella of a patient, comprising: a first member fabricated from a porous metal material and having a rounded fixation surface for implantation in the patella region of a patient with said porous metal allowing biological fixation to said patella region of said patient, said first member having a relatively flat surface opposite said rounded surface and having at least one aperture therein, and a second member fabricated from a biocompatible material and having a top rounded surface and an opposing surface having an extending projection for coacting with said aperture in said first member and dimensional so that a peripheral gap is formed between said first and second member when said projection is inserted into said aperture, said gap enabling the accommodation of soft tissue.	A patella replacement device for use in repairing or replacing the destroyed natural patella of a patient, comprising: a first member fabricated from a porous metal material and having a rounded fixation surface for implantation in the patella region of a patient with said porous metal allowing biological fixation to said patella region of said patient, said first member having a relatively flat surface opposite said rounded surface and having at least one aperture therein, and a second member fabricated from a biocompatible material and having a top rounded surface and an opposing surface having an extending projection for coacting with said aperture in said first member and dimensional so that a peripheral gap is formed between said first and second member when said projection is inserted into said aperture, said gap enabling the accommodation of soft tissue.	8. A patella replacement device for use in repairing or replacing the destroyed natural patella of a patient, comprising: a first member fabricated from a porous metal material and having a rounded fixation surface for implantation in the patella region of a patient with said porous metal allowing biological fixation to said patella region of said patient, said first member having a relatively flat surface opposite said rounded surface and having at least one aperture therein, a second member fabricated from a biocompatible material and having a top rounded surface and an opposing surface having an extending projection for coacting with said aperture in said first member and dimensional so that a peripheral gap is formed between said first and second member when said projection is inserted into said aperture, said gap enabling the accommodation of soft tissue.

Applicant's claim 15	Proposed Count III	Cohen's claim 16
15. A patella replacement device for use in repairing or replacing the destroyed natural patella comprising: a first member fabricated from a porous metal material, said first member having a rounded fixation surface for implantation in the patella region of a patient, and a relatively flat surface opposite said rounded surface, said flat surface having at least one aperture therein; an annular ring secured about said first member, said ring having a central aperture, an extending flange portion surrounding said first member and a plurality of apertures about a periphery thereof; and a second member fabricated from a biocompatible material having a top round surface and an opposing surface having an extending projection for coacting with said aperture in said first member and dimensioned so that a peripheral gap is formed between said first and second members when said projection of said second member is inserted into said aperture of said first member.	A patella replacement device for use in repairing or replacing the destroyed natural patella comprising: a first member fabricated from a porous metal material, said first member having a rounded fixation surface for implantation in the patella region of a patient, and a relatively flat surface opposite said rounded surface, said flat surface having at least one aperture therein; an annular ring secured about said first member, said ring having a central aperture, an extending flange portion surrounding said first member and a plurality of apertures about a periphery thereof; and a second member fabricated from a biocompatible material having a top round surface and an opposing surface having an extending projection for coacting with said aperture in said first member and dimensioned so that a peripheral gap is formed between said first and second members when said projection of said second member is inserted into said aperture of said first member.	16. A patella replacement device for use in repairing or replacing the destroyed natural patella comprising: a first member fabricated from a porous metal material, said first member having a rounded fixation surface for implantation in the patella region of a patient, and a relatively flat surface opposite said rounded surface, said flat surface having at least one aperture therein; an annular ring secured about said first member, said ring having a central aperture, an extending flange portion surrounding said first member and a plurality of apertures about a periphery thereof a second member fabricated from a biocompatible material having a top round surface and an opposing surface having an extending projection for coacting with said aperture in said first member and dimensioned so that a peripheral gap is formed between said first and second members when said projection of said second member is inserted into said aperture of said first member.